

EXHIBIT 1

BROWN DECLARATION IN SUPPORT OF MOTION TO EXCLUDE

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
3

4 -----
5 IN RE: HIGH-TECH EMPLOYEE)
6 ANTITRUST LITIGATION) No. 11-CV-2509-LHK
7 -----

8
9 HIGHLY CONFIDENTIAL

10
11 VIDEOTAPED DEPOSITION OF EDWARD LEAMER
12 San Francisco, California
13 Friday, October 26, 2012
14 Volume I
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19

20 Reported by:
21 ASHLEY SOEVYN
22 CSR No. 12019
23 Job No. 1545691
24

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| | | |
|----|--|----------|
| 1 | econometric equation. | 08:41:53 |
| 2 | Q. But that just -- it shows an average, | 08:41:55 |
| 3 | doesn't it? | 08:41:57 |
| 4 | MR. GLACKIN: Objection -- | 08:41:58 |
| 5 | BY MR. PICKETT: | 08:41:59 |
| 6 | Q. Pure regression analysis just shows an | 08:41:59 |
| 7 | average year by year, defendant by defendant? | 08:42:01 |
| 8 | A. Shows an average? It's used to compute an | 08:42:03 |
| 9 | average. It allows you to distinguish the impact by | 08:42:08 |
| 10 | age, for example. But what I've done is I've | 08:42:14 |
| 11 | computed an impact average across age, so there's a | 08:42:17 |
| 12 | control for difference in age composition of the | 08:42:21 |
| 13 | various defendants. | 08:42:27 |
| 14 | Q. Does the regression analysis allow you to | 08:42:28 |
| 15 | pinpoint what an individual class member's damages | 08:42:32 |
| 16 | might be? | 08:42:35 |
| 17 | A. Well, it could, but it would have to be | 08:42:35 |
| 18 | conducted in a much, more complete way. I will give | 08:42:38 |
| 19 | you an example, which is -- you got to know -- you | 08:42:40 |
| 20 | got to know a lot more details about the individuals | 08:42:43 |
| 21 | than I have in that equation in order to have any | 08:42:47 |
| 22 | kind of sensible statement with regard to individual | 08:42:49 |
| 23 | by individual. | 08:42:51 |
| 24 | For example, let me complete this, please. | 08:42:52 |
| 25 | For example, an education is certainly going to be | 08:42:54 |

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1 material consideration in talking about the impact 08:42:58
2 of cold calling. I've studied equations that had 08:43:00
3 the education variables included. But I think it 08:43:04
4 was Google, we lacked education data from several of 08:43:08
5 the defendants, and therefore, we decided to exclude 08:43:12
6 it. That's an example of -- of additional 08:43:15
7 information that would be needed in order to do an 08:43:17
8 individual by individual damage analysis, which by 08:43:22
9 the way, I was not instructed to do. 08:43:25

10 Q. Does your wage suppression regression 08:43:27
11 analysis allow you to figure out which individual 08:43:29
12 class members were not -- were not harmed and which 08:43:32
13 were the most category we went through earlier were 08:43:36
14 harmed? 08:43:40

15 A. That's a repeat of what I just said. If 08:43:41
16 you want to talk on an individual by individual 08:43:43
17 basis, you've got to set up this equation so that 08:43:45
18 you include almost all the reasons why people are 08:43:49
19 different. And the most obvious thing that is not 08:43:53
20 in there is the education variable. So had I been 08:43:58
21 asked to formulate an individual by individual 08:44:01
22 estimate, I would have -- I supposed would put a 08:44:04
23 subset of defendants for which I had the education 08:44:07
24 variable, and I don't know what I would do with the 08:44:11
25 rest. But that was not my task. 08:44:13

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1 order to know who -- what might have been affected. 08:55:42

2 In that sense, you would have to have record of cold 08:55:46

3 calls not made, and we don't have that. 08:55:49

4 So what instead we did is -- well, not 08:55:52

5 instead, we -- having identified the potential of 08:55:54

6 differential impacts depending upon skill sets, and 08:56:01

7 the three frameworks says these guys are all tied 08:56:04

8 together through their internal equity 08:56:07

9 considerations. And this thing is spread across 08:56:10

10 everybody in the firm. So in a sense, the market is 08:56:14

11 collectively for everybody. 08:56:17

12 Q. So the regression -- your regression 08:56:18

13 analysis on wage suppression answers all of that, 08:56:19

14 all of those issues? 08:56:23

15 A. It speaks to all those issues, yeah. 08:56:25

16 Q. And your regression -- wage suppression 08:56:27

17 regression analysis can answer on the question 08:56:30

18 whether a sous chef at Intel's wages were suppressed 08:56:33

19 during the class period? 08:56:37

20 A. No, they're not. I've already told you 08:56:38

21 that. It's intended to estimate the conversation 08:56:40

22 suppression by defendant, by year. And carrying 08:56:44

23 that out, I used as much individual information as I 08:56:49

24 had really, which is the age and -- but the model is 08:56:53

25 not intended to give you an estimate of how the 08:56:59

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1 damages varied with age, but instead to control for 08:57:01
2 any composition differences between the firms so 08:57:05
3 that you get as accurate as possible an estimate of 08:57:08
4 the firm by firm effect year by year. 08:57:11
5 Q. But if you look at individual class 08:57:14
6 members, like this sous chef, your regression 08:57:15
7 analysis cannot tell whether there was any 08:57:17
8 suppression of wages for that individual, correct? 08:57:23
9 MR. GLACKIN: Objection. 08:57:25
10 THE WITNESS: That's correct. That was not 08:57:26
11 part of the task that I was assigned. 08:57:27
12 BY MR. PICKETT: 08:57:37
13 Q. In a competitive market, what does it imply 08:57:37
14 about two products or services if one is able to 08:57:41
15 command double of the price? 08:57:44
16 A. Now, are you talking about facts now or 08:57:46
17 theory? 08:57:48
18 Q. Theory. 08:57:48
19 A. From a conceptual framework, so can you be 08:57:48
20 clear to me what the -- what the -- what do you mean 08:57:52
21 by a competitive model, you mean a simple supply and 08:57:55
22 demand model? 08:57:58
23 Q. Sure. 08:58:00
24 A. So can you repeat your question again? 08:58:00
25 Q. In a competitive market, what does it imply 08:58:01

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which one clusters their observations.

15:31:22

Q. And do you think that your analysis is subject to that criticism?

15:31:25

15:31:27

MR. GLACKIN: Objection.

15:31:30

THE WITNESS: Well, maybe I misunderstood.
I'm not sure what clustering standard -- clustering
standard errors are.

15:31:31

15:31:32

15:31:34

BY MR. PICKETT:

15:31:35

Q. So you -- you don't think -- well, let me go back. I'll reask the question. Are you familiar with the term "clustering standard error"?

15:31:35

15:31:37

15:31:41

A. Well, I know what clustering is.

15:31:44

Q. Uh-huh.

15:31:46

A. And I know what standard of errors are in the context of your question, which I thought is what we were talking about. But I think you're talking about some kind of standard of errors that apply to the Figure 23 that you're calling clustering standard of errors, which is something that I'm not familiar with.

15:31:46

15:31:49

15:31:52

15:31:54

15:31:57

15:31:59

15:32:01

Q. Would it be appropriate to use clustering in performing your regression analysis?

15:32:02

15:32:05

A. I don't see why. I don't see why. It's possible that some argument can be made that it doesn't come to the front of my brain, but off th

15:32:18

15:32:22

15:32:24

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1 top of my head -- by "clustering," I think you mean 15:32:27
2 using subsets of the data. And I think that's a 15:32:32
3 consequence of nothing in the air that would rather 15:32:34
4 be built into the model, rather than during 15:32:37
5 progression of subsets. 15:32:39

6 Q. Are any of the data series you used 15:32:42
7 correlated? 15:32:43

8 A. Every one of these variables is correlated. 15:32:44
9 Every variable in the equation has some degree of 15:32:46
10 correlation. 15:32:52

11 Q. Well, why -- okay. And -- did your conduct 15:33:16
12 regression pick up any lawful agreement -- by 15:33:16
13 "lawful," I mean talking about that unilateral 15:33:20
14 policy, for example, or some joint corroboration 15:33:23
15 that started in 2005? 15:33:26

16 A. Yes, it will pick up anything that is 15:33:32
17 applicable to that period of time when the thing is 15:33:34
18 turned on. So it's turned on for 2005, 2009, a 15:33:37
19 little different for Pixar and Lucasfilm. But -- 15:33:41
20 but unless you have controls in this equation to 15:33:43
21 eliminate the effects of these other material 15:33:48
22 issues -- 15:33:51

23 Q. Okay. 15:33:51

24 A. -- they are going to be picked up by that 15:33:51
25 conduct variable. 15:33:53

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| | | |
|----|--|----------|
| 1 | THE WITNESS: The answer -- already, we | 15:55:56 |
| 2 | obviously -- if we had the cold calling data, it | 15:55:57 |
| 3 | would be very useful, very interesting, and we could | 15:56:00 |
| 4 | pursue the price discovery model in an interesting | 15:56:02 |
| 5 | and intervening way. Absent that, we've done the | 15:56:06 |
| 6 | very best that can be possibly be done, which is to | 15:56:08 |
| 7 | use the conduct variable. | 15:56:10 |
| 8 | BY MR. PICKETT: | 15:56:13 |
| 9 | Q. And so your conduct regression would pick | 15:56:13 |
| 10 | up any unilateral agreements -- I'm sorry, any | 15:56:15 |
| 11 | unilateral policies that started in 2005 not to cold | 15:56:20 |
| 12 | call, correct? | 15:56:24 |
| 13 | MR. GLACKIN: Objection, asked and answered | 15:56:26 |
| 14 | again. | 15:56:27 |
| 15 | THE WITNESS: To the extent that those | 15:56:28 |
| 16 | unilateral agreements suppress wages, the answer is | 15:56:29 |
| 17 | yes. | 15:56:33 |
| 18 | BY MR. PICKETT: | 15:56:33 |
| 19 | Q. Well, wouldn't they, by your hypothesis? | 15:56:33 |
| 20 | A. Well, you had this hypothesis that the cold | 15:56:36 |
| 21 | call would be going to somebody else. | 15:56:38 |
| 22 | Q. I do, yes. | 15:56:40 |
| 23 | A. So the point is that -- (Cross-talking.) | 15:56:42 |
| 24 | Q. In your world, wouldn't your conduct | 15:56:44 |
| 25 | regression pick up unilateral policies starting in | 15:56:47 |

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|----|--|----------|
| 1 | 2005? | 15:56:52 |
| 2 | A. I'll repeat my answer, which is it picks up | 15:56:53 |
| 3 | suppression of compensation during the period of | 15:56:58 |
| 4 | time which the cold call dummy -- the conduct | 15:57:01 |
| 5 | dummies turn it on. | 15:57:03 |
| 6 | Q. And if Google had a unilateral policy not | 15:57:05 |
| 7 | to cold call Oracle employees, it would pick that | 15:57:08 |
| 8 | up, too? | 15:57:11 |
| 9 | A. To the extent that these are coincident in | 15:57:12 |
| 10 | time with the agreements that they had, these | 15:57:14 |
| 11 | bilateral agreements they had, and to the extent | 15:57:17 |
| 12 | that they suppress wages during that period of time, | 15:57:20 |
| 13 | it's going to be picked up by the conduct variable | 15:57:21 |
| 14 | unless there's some other control in the equation | 15:57:25 |
| 15 | that accounts for that availability. | 15:57:28 |
| 16 | Q. So do you know how much of this unilateral | 15:57:30 |
| 17 | activity within the defendants -- or outside of the | 15:57:32 |
| 18 | group of seven defendants is being picked up or | 15:57:35 |
| 19 | not? | 15:57:38 |
| 20 | A. I do not know how much. I've indicated | 15:57:41 |
| 21 | that unless that -- that unilateral -- what you're | 15:57:45 |
| 22 | calling unilateral websites is put in place exactly | 15:57:49 |
| 23 | the same period of time that the bilateral | 15:57:53 |
| 24 | agreements were put in place, called off the same | 15:57:54 |
| 25 | time, if it satisfied that requirement, it's going | 15:57:57 |

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| | | |
|----|---|----------|
| 1 | to be picked up and these equations, except to the | 15:57:59 |
| 2 | extent that is being accounted for by other | 15:58:02 |
| 3 | variables in the equation. | 15:58:06 |
| 4 | Q. Does that matter to you that you can't pick | 15:58:09 |
| 5 | up some of that activity? | 15:58:12 |
| 6 | A. Well, I didn't say I couldn't pick it up. | 15:58:15 |
| 7 | I said I could possibly pick it up with some of | 15:58:17 |
| 8 | these other variables in the equation -- | 15:58:20 |
| 9 | (Cross-talking.) | 15:58:20 |
| 10 | Q. Possibly could, possibly couldn't? | 15:58:21 |
| 11 | A. Well, you told me a possible this and a | 15:58:24 |
| 12 | possible that, so we've got sequences of possible | 15:58:25 |
| 13 | here, so, yes, the answer is possible. | 15:58:28 |
| 14 | Q. And does it matter to you that there is a | 15:58:31 |
| 15 | lot of -- or there could be a lot of legitimate | 15:58:34 |
| 16 | activity that's being picked up in your conduct | 15:58:36 |
| 17 | regressions? | 15:58:40 |
| 18 | MR. GLACKIN: Objection, vague and | 15:58:40 |
| 19 | ambiguous. | 15:58:42 |
| 20 | THE WITNESS: I believe the conduct | 15:58:43 |
| 21 | variable is defined in a way that allows it to pick | 15:58:45 |
| 22 | up the effects of the these bilateral agreements. | 15:58:49 |
| 23 | BY MR. PICKETT: | 15:58:52 |
| 24 | Q. Simply by the on-off conduct assumption? | 15:58:52 |
| 25 | A. Correct. | 15:59:00 |

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|----|---|----------|
| 1 | A. Well, these -- | 16:00:00 |
| 2 | Q. -- during the class periods? | 16:00:00 |
| 3 | A. Those would be anecdotes, rather than a | 16:00:00 |
| 4 | general statement, but -- | 16:00:00 |
| 5 | Q. It's relevant data, isn't it? | 16:00:00 |
| 6 | MR. GLACKIN: Please finish your answer. | 16:00:00 |
| 7 | THE WITNESS: It's relevant, but not | 16:00:00 |
| 8 | decisive. | 16:00:00 |
| 9 | BY MR. PICKETT: | 16:00:00 |
| 10 | Q. Do you have decisive data? | 16:00:00 |
| 11 | A. No, I do not. | 16:00:00 |
| 12 | Q. Let me ask you about paragraph 76 on page | 16:00:00 |
| 13 | 32 of the -- | 16:00:00 |
| 14 | THE REPORTER: One more time, off the | 16:00:00 |
| 15 | record. Sorry. | 16:00:00 |
| 16 | THE VIDEOGRAPHER: Okay. Off the record. | 16:00:00 |
| 17 | It's 5:47. | 16:00:00 |
| 18 | (Recess taken.) | 17:49:52 |
| 19 | THE VIDEOGRAPHER: Back on the record. | 17:49:52 |
| 20 | It's 5:50. | 17:50:08 |
| 21 | BY MR. PICKETT: | 17:50:14 |
| 22 | Q. So looking at paragraph 76, you state that | 17:50:14 |
| 23 | "Agreements that reduce the number of bilateral | 17:50:18 |
| 24 | bargains further slow the price discovery process | 17:50:21 |
| 25 | and effect the whole sequence of actual | 17:50:24 |

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|----|---|----------|
| 1 | transactions." | 17:50:26 |
| 2 | Is your opinion that the challenged | 17:50:27 |
| 3 | agreements reduced the number of bilateral bargains | 17:50:29 |
| 4 | during the class period? | 17:50:32 |
| 5 | A. Well, I include bargains, conduct in | 17:50:35 |
| 6 | general. And my opinion is that the anti-cold | 17:50:38 |
| 7 | calling agreements did reduce the number of | 17:50:43 |
| 8 | contacts. | 17:50:45 |
| 9 | Q. So a bargain is not an agreement, it's a -- | 17:50:46 |
| 10 | it's a discussion about potential agreements? | 17:50:49 |
| 11 | MR. GLACKIN: Objection, argumentative, | 17:50:54 |
| 12 | mischaracterizes. | 17:50:55 |
| 13 | THE WITNESS: It's a communication -- I | 17:50:57 |
| 14 | want it to be defined as a communication that | 17:50:57 |
| 15 | reveals information about possibilities. | 17:51:00 |
| 16 | BY MR. PICKETT: | 17:51:04 |
| 17 | Q. And -- | 17:51:04 |
| 18 | A. And the more that that goes on, the more | 17:51:08 |
| 19 | rapidly will be the finding of the equilibrium | 17:51:09 |
| 20 | market. | 17:51:12 |
| 21 | Q. How do you know that other cold calls to | 17:51:12 |
| 22 | other employers and employees didn't substitute? | 17:51:16 |
| 23 | A. This one we've been on before, too. So the | 17:51:23 |
| 24 | answer is, I -- I don't have evidence on that. | 17:51:26 |
| 25 | Q. So you don't know whether the price | 17:51:30 |

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1 discovery process was further slowed or not? 17:51:34

2 A. But we will leave that to the regression. 17:51:37

3 This is -- lays all down the framework, the same 17:51:39

4 thing we've been saying over and over. It's to set 17:51:44

5 the framework that suggests that there will be an 17:51:46

6 impact on price formation and will go to the data to 17:51:47

7 decide whether it's actually there. 17:51:52

8 MR. GLACKIN: So I -- since you seem to be 17:51:54

9 moving on, I want to raise something that came up 17:51:56

10 over the break, which is hat Dr. Leamer needs to 17:51:59

11 leave here at 7:00 o'clock, to go on an airplane and 17:52:02

12 go. And I don't think this deposition needs to go 17:52:05

13 beyond 7:00. 17:52:07

14 MR. PICKETT: I'll try, but I can't 17:52:07

15 guaranty. And if we need to adjourn, we can 17:52:09

16 reconvene. 17:52:10

17 MR. GLACKIN: I just want to be clear, 17:52:11

18 we're going to oppose reconvening after that. 17:52:13

19 MR. PICKETT: I want to tell you that if I 17:52:15

20 have questions, I'll go to court to try and get the 17:52:17

21 right to do that. (Cross-talking.) 17:52:20

22 MR. GLACKIN: Well, we made -- 17:52:21

23 (Cross-talking.) 17:52:21

24 MR. PICKETT: Let's not waste the time now. 17:52:22

25 MR. GLACKIN: We made him available for 17:52:22

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|----|--|----------|
| 1 | Q. Do you know where the new hires came | 18:07:29 |
| 2 | from? | 18:07:31 |
| 3 | A. Well, these new hires came from other | 18:07:31 |
| 4 | defendants. | 18:07:34 |
| 5 | Q. Right. So do you know if they came from an | 18:07:35 |
| 6 | Intel plant in Arizona or they came from someplace | 18:07:38 |
| 7 | else? | 18:07:41 |
| 8 | A. I could determine that, but I'm not so sure | 18:07:43 |
| 9 | that the -- that the moving van is the critical | 18:07:44 |
| 10 | issue, when you say moving cost. So there are a | 18:07:49 |
| 11 | whole lot of other dislocation costs that perhaps | 18:07:51 |
| 12 | are much more important than simply how much it | 18:07:54 |
| 13 | costs to hire a moving van. | 18:07:56 |
| 14 | Q. So at least we can agree on this, the | 18:08:00 |
| 15 | Figures 6 and 7 show that there was movement among | 18:08:02 |
| 16 | the defendants during the class period, right? | 18:08:06 |
| 17 | A. That's true. | 18:08:08 |
| 18 | Q. So the agreements didn't prevent that, | 18:08:10 |
| 19 | right? | 18:08:12 |
| 20 | A. Yes, again. | 18:08:16 |
| 21 | Q. And under your theory, wouldn't these | 18:08:17 |
| 22 | movers affect compensation? | 18:08:19 |
| 23 | A. They would, yes. | 18:08:23 |
| 24 | Q. They would have information about what the | 18:08:24 |
| 25 | other defendants are paying, correct? | 18:08:26 |

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1 A. They would, yes. 18:08:29

2 Q. And that information flow would generate 18:08:30
3 from these movers, join the other firms, correct? 18:08:32

4 A. There would be information as a consequence 18:08:38
5 of these movers, and as a consequence of the whole 18:08:40
6 bargaining that led up to the move. 18:08:43

7 Q. Right. So did you investigate whether 18:08:45
8 there was enough movement to impact the information 18:08:46
9 flow? 18:08:51

10 MR. GLACKIN: Objection, asked and 18:08:52
11 answered. 18:08:53

12 THE WITNESS: So, again, we're going to 18:08:54
13 rely on the -- on the regression model. These are 18:08:54
14 conceptual possibilities that we're going to have to 18:08:58
15 ultimately fall back on regression models to 18:08:59
16 determine the impact. 18:09:01

17 BY MR. PICKETT: 18:09:06

18 Q. Let me ask you to turn to paragraph 95 on 18:09:06
19 page 39. There you state that, "Cold calling is 18:09:16
20 likely to be most active during the industry 18:09:22
21 expansions in which the industry overall is enjoying 18:09:25
22 rapid growth and facing supply constraints of 18:09:29
23 workers at every level experience." 18:09:29

24 Do you have any support for that, factually 18:09:34
25 or theoretical? 18:09:37

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1 STATE OF CALIFORNIA) ss:

2 COUNTY OF MARIN)

3
4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 29th day of October, 2012.

24
25 _____
ASHLEY SOEVYN, CSR No. 12019